IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1838 of 1999

in

SPECIAL CIVIL APPLICATIONNo 9362 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR
and
Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTIBHAI MAGANBHAI PARMAR

Versus

HUSSAIN MIYA MIRSABMIYA

Appearance:

MR JITENDRA M PATEL for Appellants

MR MC SHAH for Respondent No. 1

MR KK TRIVEDI for Respondent No. 11

CORAM : MR.JUSTICE C.K.THAKKAR
and
MR.JUSTICE D.P.BUCH

Date of decision: /02/2000

CAV JUDGEMENT

Per Thakker, J.

This appeal is filed against dismissal of SCA No., 9362 of 1999 by the learned Single Judge on November 29, 1999.

Appellants were the original petitioners. They filed a petition by challenging legality and validity of the order dated September 24, 1999 passed by the Gujarat Revenue Tribunal by which the order passed by the Mamlatdar and ALT as well as the order passed by the Deputy Collector were confirmed and it was held that the appellants-petitioners were not tenants of the land in question.

It was the case of the appellants that they were tenants of the land in question and that they had become deemed purchasers. But the said order was challenged before the Gujarat Revenue Tribunal in previous proceedings and by an order dated October 17, 1985, GRT allowed the revision and remanded the matter to the Mamlatdar and ALT with a direction to hear all parties concerned and to determine whether the appellants were tenants in respect of the land in question or any other person was tenant thereof.

In pursuance of the remand order, proceedings were initiated again before the Mamlatdar and ALT who came to the conclusion that the appellants were not tenants of the disputed land . For reaching that conclusion, certain statements were recorded by the Mamlatdar and ALT and a finding was recorded that the land in question was mortgaged to Maganlal Nanabhai, father of appellant No.1 and husband of appellant No.2. Appellants were in possession of the land as mortgagees as the land was mortgaged to late Maganlal Nanabhai but they were not in possession as tenants. Said finding was confirmed by the Deputy Collector and also by the GRT.

Before the learned Single Judge, several contentions were raised. It was urged that Mamlatdar and ALT exceeded his jurisdiction in deciding that the petitioners were not tenants. It was also submitted that the petitioners were all throughout in possession and though they were not dispossessed, the Mamlatdar committed an error of law and/or of jurisdiction in invoking provisions of Section 32 (1B) of the Bombay Tenancy and Agricultural Lands Act,

1948 (hereinafter referred to as `Act'). He ought to have referred to, relied upon and invoked Section 32G. It was also submitted that Section 32-M is evidence of a conclusive nature and he ought to have considered the same. Likewise, non-consideration of Section 25-A has also resulted in prejudice of injustice. Reliance was placed on two decisions of this Court in Kalabhai and brothers vs. Taraben,widow of Gordhanbhai Mangalbhai , 32 (1) GLR 118 and Navrangpura Dharmada Gam Milkat Trust and another vs. Ramtuji Ramaji and others, 34 (2) GLR 1496.

Considering the facts of the case, learned Single Judge held that the order passed by GRT remanding the matter to the Mamlatdar and ALT was never challenged. Said decision, therefore, was final and binding to the parties. In exercise of the power, Mamlatdar and ALT permitted the parties to put forward their case and on the basis of the evidence, came to the conclusion that the appellants were not tenants but mortgagees and hence, they could not be protected. Learned Single Judge also observed that in recording the finding on the basis of the evidence adduced by the parties, no error of law can be said to have been committed by the Mamlatdar and ALT and as the said finding was confirmed by the two authorities viz. Deputy Collector and GRT, it cannot be interfered with by this Court. Learned Single Judge also observed that Mirsabmiya had sold the land in question before the Tiller's Day and hence, Mamlatdar was right in recording statements as per the order passed by the GRT and in coming to the conclusion that the petitioners-appellants were not tenants. According to the learned Single Judge, the authorities were also right in observing that Maganlal Nanabhai who was in possession of the land was not in possession thereof as a tenant but mortgagee. Regarding provisions of Section 32 (1B), learned Single Judge held that from a perusal of the statement made by appellant No.2, the authorities were right in holding that she was dispossessed of the land in question in past and hence,the authorities were right in proceeding under Section 32 (1B) and not under Section 32-G, as contended by the appellants. Learned Single Judge also observed that the petitioners were not shown as tenants of the land in question. Entry No. 2169 wherein the petitioners were shown as tenants was subsequently cancelled and there was no error in cancelling such entry. Learned Single Judge also distinguished the decisions of this Court on which reliance was placed.

On the basis of evidence and material on record, the

learned Single Judge stated:

> "As stated hereinabove, and as per the concurrent findings arrived at by all the authorities, the petitioners were not tenants in respect of the land in question on the Tiller's Day . As the petitioners were in possession of the land in question in pursuance of a mortgage transaction and not as tenants, they have been rightly not held to be tenants in respect of the land in question."

We have heard Mr. J.M.Patel for the appellants and Mr. M.C.Shah for the respondents. All the contentions which were raised before the learned Single Judge were also raised before us. Our attention was also invited to the following authorities over and above the decisions cited before the learned Single Judge:

(1) Manubhai Patel vs. Ramchandra Bhatt, (1989) (1) GLR 146;

(2) Shanabhai Vithalbhai vs. Bakorbhai Vithalbhai, AIR 1972, Guj. 184;

(3) Ramchandra Keshav Adke vs. Govind Joshi, AIR 1975 SC 915;

(4) Amrit Bhikaji vs. Kashinath Janardhan, AIR 1983 SC 643.

Mr M.C.Shah for the respondents, on the other hand, supported the order passed by the learned Single Judge and he submitted that the learned Single Judge has not committed any error of law and/or of jurisdiction which requires interference by the appellate Court. He submitted that LPA does not deserve admission.

In our opinion, learned Single Judge has not committed any error of law and/or of jurisdiction in dismissing the petition. All the authorities under the Act viz. Mamlatdar and ALT, Deputy Collector and GRT have recorded findings on the basis of evidence adduced before them that the appellants were not tenants of the disputed land . Such a finding can be said to be a finding of fact. It is based on evidence on record and cannot be interfered with in a petition under Article 226/227 of the Constitution. Again, it is in the realm of appreciation and reappreciation of evidence which is not in exercise of power of judicial review. So far as the

order passed by GRT in earlier proceedings is concerned, as observed by the learned Single Judge, it was never challenged. Hence, it cannot be contended that statements of other persons could not have been recorded by Mamlatdar and ALT, after the matter was remanded by GRT. It was argued that though statements of certain persons ought to have been recorded, they were not recorded, which has resulted in miscarriage of justice. When GRT remanded the matter to Mamlatdar and ALT, it wrongly directed him to record statements of other persons . In our view, when the said order of GRT was not challenged by filing appropriate proceeding at that time, now the appellants cannot contend that no such statements could have been recorded. If on the basis of the statements recorded by the Mamlatdar and ALT, he came to the conclusion that the appellants were not tenants but mortgagees, such a finding cannot be said to be of "no evidence" and/or that there is jurisdictional error on the part of the Mamlatdar and ALT. Provisions of Section 32-G would apply only if the appellants were tenants and not otherwise. When they were not held to be tenants and such a finding is not interfered with by the learned Single Judge, it cannot be said that by not deciding the case on the basis of provisions of Section 32-G, any error of law and/or of jurisdiction can be said to have been committed by the authorities or by the learned Single Judge. We see no ground to interfere with the order passed by the learned Single Judge.

For the foregoing reasons, in our opinion, there is no infirmity in the order passed by the learned Single Judge. LPA, therefore, deserves to be dismissed and is accordingly dismissed. No order as to costs. No order on civil application.

--

parekh